

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6750

Investigation of Vermont Electric Cooperative, Inc.'s)	Hearing at
tariff filing requesting a 6.93% rate increase, to take)	Montpelier, Vermont
effect August 14, 2002)	February 5, 2003

Order entered: 3/12/2003

PRESENT: Ann Bishop, Hearing Officer

APPEARANCES: Sarah Hofmann, Esq.
for Vermont Department of Public Service

Michael L. Burak, Esq.
Burak, Anderson, & Melloni
for Vermont Electric Cooperative, Inc.

I. INTRODUCTION

In this Proposal for Decision, I recommend that the Public Service Board ("Board") approve a Memorandum of Understanding ("MOU") between Vermont Electric Cooperative, Inc. ("VEC") and the Vermont Department of Public Service ("DPS") that provides for, among other things:

- a 6.2 percent increase in VEC's rates (an annual revenue increase of \$1,108,463);
- the establishment of a Service Quality and Reliability Plan to measure VEC's performance;
- certain changes to VEC's demand-side management programs; and
- increased annual spending by VEC on vegetative maintenance.

The MOU resolves all issues in this Docket except for those related to rate design. After reviewing the MOU and the evidence in the record, I conclude that the settlement terms as provided in the MOU are reasonable, with one exception. The MOU provides that the 6.2 percent increase in VEC's rates should be effective with *bills rendered* on or after August 14,

2002. However, the revised tariffs filed by VEC on June 28, 2002, were to be effective with *service rendered* on or after August 14, 2002. Therefore, I recommend that the Board modify Paragraph 2 of the MOU so that the 6.2 percent increase in VEC's rates is effective with *service rendered* on or after August 14, 2002. With this modification, I find that approval of the MOU will result in rates that are just and reasonable.

I also recommend that the Board clarify that changes in the Times Interest Earned Requirement ("TIER") of a utility's bond covenants are significant enough that the Board should at least be notified prior to the execution of any documents which effect the changes. In addition, I recommend that the Board specifically require VEC to notify the Board in the future before executing any documents which change its TIER. However, I do not recommend that the Board decide now whether such changes require Board approval because resolution of this issue is not necessary to resolve the contested issues in this Docket. Instead, I recommend that the Board inform VEC that if it wishes to file either for approval of the prior change in TIER, or for a declaratory ruling that Board approval of that change is not necessary, it may do so outside this Docket.

II. PROCEDURAL HISTORY

On June 28, 2002, VEC filed revisions to its tariffs reflecting a 6.93 percent increase in its rates (an annual revenue increase of \$1,231,405) and a rate design change, to take effect on a service-rendered basis commencing August 14, 2002.

On July 29, 2002, the DPS, pursuant to 30 V.S.A. § 225, informed the Board that it had reviewed the filing and recommended that it be investigated.

In its Order dated August 15, 2002, the Board opened this investigation and stated that, pursuant to 30 V.S.A. § 226(b), until the Board issues a final order in this proceeding, the increased rates should be implemented by means of an additional 6.93 percent surcharge to each class of ratepayers under the rate design tariffs previously approved by the Board.

A prehearing conference was held on August 29, 2002. At the prehearing conference, it was stated that consistent with long-standing Board practice and 30 V.S.A. § 227(a), the rate case

components of VEC's filing would be reviewed and decided first, followed by review and determinations regarding the rate design components.

A public hearing was held on October 1, 2002, via Vermont Interactive Television, at sites in Brattleboro, Colchester, and Newport, Vermont.

On January 29, 2003, the DPS filed a Memorandum of Understanding ("MOU") between VEC and the DPS. A copy of the MOU is attached hereto as Appendix I. The MOU, if approved, would resolve all issues in this Docket, except for those relating to rate design.

On February 3, 2003, the Clerk of the Board sent the parties written questions regarding the MOU.

On February 5, 2003, a technical hearing was held in this Docket at which the parties stipulated to the admission into the record of the MOU as exhibit Joint-1. The parties also stipulated to the admission of all prefiled testimony and attached exhibits.¹ At the technical hearing, the parties provided oral responses to most of the questions sent to them in advance, and VEC submitted a legal opinion entitled "Response to Question 8: Reduction in TIER Requirements for First Mortgage Bonds."

Based upon the evidence of record, including the agreements contained in the MOU, I hereby report the following findings and conclusions to the Board in accordance with 30 V.S.A. § 8.

III. FINDINGS

1. The revised tariffs filed by VEC on June 28, 2002, stated that they were to be effective for service rendered on and after August 14, 2002. Original tariff filing at Explanatory Tariff Sheets, *generally*.

1. On June 28, 2002, VEC submitted the prefiled testimony of Harry R. Abendroth, Pamela J. Jarvis, Craig Kieny, Linda Reeve, and Elaine Saunders. On July 24, 2002, VEC submitted the supplemental prefiled testimony of Craig Kieny regarding demand-side management programs. On September 6, 2002, VEC submitted the supplemental prefiled testimony of Craig Kieny regarding VEC's new power supply agreement with Morgan Stanley Capital Group and the impact of that agreement on VEC's anticipated power costs for the adjusted test year.

On October 21, 2002, the DPS submitted the prefiled testimony of Sean A. Foley, Deena L. Frankel, Raymond E. Koliander, and Carole E. Welch.

2. The MOU provides that VEC will credit customers' accounts for the total difference between the rate approved by the Board in this docket and the 6.93 percent that customers began paying on August 14, 2002. The crediting of customer accounts will take place within 60 days of the Board's order regarding the MOU. Exh. Joint-1 at ¶ 3.

3. VEC's performance will be measured by customer service, safety, and reliability standards included in the Service Quality and Reliability Plan ("Service Quality Plan") that is Attachment B of the MOU. Exh. Joint-1 at ¶ 5 and Attachment B, *generally*.

4. The Service Quality Plan provides that VEC and the DPS will negotiate binding minimum performance standards and make any necessary refinements to the measurement process, reporting protocols and methods of data collection. The result of these negotiations will be known as the "Final Plan", and will be filed with the Board for approval no later than 60 days following the issuance of a Board order regarding the MOU. The Final Plan will be in effect for two years following the date of approval by the Board. Exh. Joint-1 at ¶¶ A.2 and A.3 of Attachment B.

5. The Service Quality Plan provides that the Final Plan will include, to the greatest extent possible, customer service guarantees permitting the waiver of fees for services not provided on a timely basis. Exh. Joint-1 at ¶ A.6 of Attachment B.

6. The Service Quality Plan provides that no later than 90 days prior to the expiration of the Final Plan, VEC and the DPS will negotiate, and submit to the Board for approval, a successor plan. This successor plan will include financial penalties and/or incentives tied to performance. Exh. Joint-1 at ¶ A.3 of Attachment B.

7. The Service Quality Plan provides that VEC will file quarterly reports including its performance results with the DPS and the Board. Exh. Joint-1 at ¶ B.1 and ¶ B.2 of Attachment B.

8. The MOU provides that VEC will modify its Residential Fuel-Switching Program to eliminate duplication with the residential high use services offered by Efficiency Vermont. Efficiency Vermont's fuel switching incentives and associated contract management services will be utilized where appropriate, and duplicate or redundant services will be avoided to the greatest extent possible. Exh. Joint-1 at ¶ 6.a.

9. The MOU provides that VEC will conduct the initial audit and claim the savings resulting from non-fuel switching measures installed. Where fuel-switching incentives and associated contract management costs are paid by Efficiency Vermont, Efficiency Vermont will report the savings resulting from the fuel-switching measures installed. Exh. Joint-1 at ¶ 6.b.

10. The MOU provides that VEC will develop detailed program implementation procedures in cooperation with Efficiency Vermont to improve the coordination between VEC and Efficiency Vermont in the delivery of energy efficiency services to its residential high use members. VEC will provide detailed implementation information in its 2002 DSM Annual Report to the Board which is due April 1, 2003. Exh. Joint-1 at ¶6.c.

11. VEC and Efficiency Vermont have already held discussions, and reached an agreement, regarding coordination in the delivery of efficiency services to VEC's residential high use members. They are continuing to work together to identify forms; this should be complete within the next month. Tr. 2/5/03 at 5 (Enright).

12. In August 2002, VEC began a "volunteerism" program under which VEC would contribute up to four hours of each employee's time to enable each employee to volunteer for different community activities. The MOU provides that VEC will discontinue its "volunteerism" program to the extent it creates any costs that are passed on to VEC ratepayers. This is appropriate because of the Board's long-standing policy that captive ratepayers should not be forced to pay for a utility's charitable contributions. Tr. 2/5/03 at 6 (Enright); tr. 2/5/03 at 7 (Koliander); exh. Joint-1 at ¶ 7.

13. VEC's current 13-year vegetative maintenance cycle is too long. The MOU provides that VEC will increase its vegetative maintenance operations to reduce that cycle to 10 years. Exh. Joint-1 at ¶ 8.

14. Under the terms of the MOU, VEC will spend at least \$475,000 annually on vegetative maintenance. This amount is net after any contributions made by other utilities to vegetative maintenance in VEC's service territory. VEC will file a detailed report annually, at the same time that it files its FERC Form 1, regarding its vegetative maintenance activities and expenditures. Exh. Joint-1 at ¶ 8; tr. 2/5/03 at 7 (Enright); tr. 2/5/03 at 7 (Koliander).

15. VEC will revise the rate design proposal previously filed in this docket to reflect the revenue requirement approved by the Board in its order regarding the MOU. Exh. Joint-1 at ¶ 10.

16. The MOU does not address two issues raised by the DPS: (1) customer confusion regarding VEC's billing format and disconnection notices; and (2) a change in the covenants of VEC's first mortgage bonds dated August 1, 1997, to reduce the TIER from 2.2 to 1.5. Tr. 2/5/03 at 17-18 (Koliander); Frankel pf. at 10-11; Koliander pf. at 4; exh. Joint-1, *generally*.

17. VEC and the DPS are working together to revise the format of VEC's disconnection notices. VEC is researching ways to address the DPS's concerns regarding its billing format. Although these issues are not yet resolved, it is not necessary for the Board to resolve them now. VEC has committed to work with the DPS to resolve its concerns regarding VEC's bills and disconnection notices. Tr. 2/5/03 at 10-11 (Frankel); tr. 2/5/03 at 11 (Enright).

18. Changes to TIER cause significant changes to a utility's revenue requirement. In this instance, if the TIER in VEC's bond covenants had not been lowered, VEC would have needed to collect approximately one million additional dollars from its ratepayers. Tr. 2/5/03 at 17-18 (Koliander).

IV. DISCUSSION

According to the parties, the MOU resolves all the issues in this Docket, except for those related to rate design. After reviewing the terms of the MOU, and the evidence in the record, I find it to be reasonable, and recommend that the Board approve it, with one modification: the 6.2 percent rate increase should be effective with *service rendered*, not *bills rendered* on and after August 14, 2002. This issue is discussed below, along with two other aspects of the MOU that deserve discussion: (1) VEC's coordination with Efficiency Vermont regarding the delivery of efficiency services to VEC's residential high use members; and (2) VEC's new Service Quality Plan.

In addition, there are two issues raised by the DPS's testimony in this Docket that are not addressed by the MOU: (1) customer confusion regarding VEC's billing format and

disconnection notices; and (2) a change in the covenants of VEC's first mortgage bonds dated August 1, 1997, to reduce the TIER from 2.2 to 1.5. These also are discussed separately below.

Service Rendered Effective Date

Paragraph 2 of the MOU states, in relevant part, that "the Parties agree that an increase in VEC's annual revenues of 6.2% over and above the current rate level, effective with *bills rendered* on or after August 14, 2002, will result in just and reasonable rates subject to the terms of this MOU."² However, the original revised tariffs (and the notice that was sent to customers) stated that the tariffs would be effective with *service rendered* on or after August 14, 2002. This distinction is meaningful because 30 V.S.A. 225(a) requires that all proposed rate changes "shall be plainly indicated upon existing schedules, or by filing new schedules in lieu thereof forty-five days prior to the time the same are to take effect." The language in the revised tariffs, which were filed with the Board on June 28, 2002, meets the statutorily-required 45-day notice period. However, because *bills rendered* on or after August 14, 2002, means that customers are charged the new rates for *service rendered* on or after *July* 14, 2002, this does not meet the statute's notice requirements. Therefore, I recommend that the Board modify Paragraph 2 of the MOU so that the agreed-upon 6.2 percent rate increase would be effective with *service rendered* on or after August 14, 2002, as the original revised tariffs contemplated.

VEC's Coordination with Efficiency Vermont

I am pleased that VEC and Efficiency Vermont are working together to coordinate the delivery of efficiency services to VEC's residential high use members. Under the bilateral agreement between the DPS and VEC that was approved by the Board in its 9/30/99 Order in Docket 5980, VEC agreed to fund a Residential Fuel Switching Program through December 31, 2002.³ At the time that bilateral agreement was signed, Efficiency Vermont did not plan to offer a residential high use retrofit program. Now, however, Efficiency Vermont does offer customer

2. Exh. Joint-1 at ¶ 2 (italics added).

3. Docket 5980, Order of 9/30/99 at A-98–A-99.

incentives and services for cost effective efficiency measures for residential high use customers.⁴ Since VEC's members already pay for Efficiency Vermont's services through the Energy Efficiency Charge, it is in VEC's members' best interest to take full advantage of the services and incentives offered by Efficiency Vermont. The division of services and expenditures outlined in the MOU will accomplish that, and I commend the parties for reaching this resolution.

Service Quality Plan

I also am pleased by the Service Quality Plan that is attached to the MOU. Section 219 of Title 30 requires electric utilities (and other regulated companies) to "furnish reasonably adequate service, accommodation and facilities to the public." Vermont law gives this Board the authority to set standards regarding this utility obligation. Specifically, 30 V.S.A. § 209(a)(1) gives this Board jurisdiction over "[t]he . . . quality of any product furnished or sold by any company subject to supervision under this chapter," and 30 V.S.A. § 209(a)(3) provides jurisdiction over "[t]he manner of operating and conducting any business subject to supervision under this chapter, so as to be reasonable and expedient, and to promote the safety, convenience and accommodation of the public[.]" Taken together, these statutory provisions establish the basis for service quality and reliability standards by which the adequacy of service can be measured in order to determine whether a company is, in fact, providing "reasonably adequate service" and is operating its business in a "reasonable and expedient" manner that "promotes the safety, convenience, and accommodation of the public."

The Board has now approved service quality plans for many of the state's electric utilities.⁵ These service quality plans all set out standards by which the particular utility company's customer service, safety, and reliability performance will be measured. These other plans, like VEC's Service Quality Plan, include standards that cover seven broad areas of service that have a substantial impact on consumers: call answering; billing; meter reading; work completion; customer satisfaction; worker safety; and reliability.

4. Welch pf. at 3.

5. See, e.g., Docket 6107, Order of 1/23/01 at 87–90 and appendices pages 26–36; Dockets 6120/6460, Order of 6/26/01 at 43–46; Docket 6634, Order of 5/17/02, *generally*.

In general, the framework of VEC's Service Quality Plan is substantially similar to the service quality plans for Green Mountain Power Corporation ("GMP") and Central Vermont Public Service Corporation ("CVPS") that the Board approved in their respective rate cases.⁶ In those cases, the Board found that those service quality plans provide significant benefits to ratepayers, including more comprehensive service monitoring, supplying public information on the level of service a company is providing, the establishment of a database from which to set future, more stringent targets, the waiver of fees for missed service appointments, and expected financial penalties in the successor plan to be adopted after two years.⁷ Since the Plan is generally similar to GMP's and CVPS's plans, I find that the benefits provided to VEC's ratepayers will be similar to those provided to GMP's and CVPS's ratepayers.

However, there is one significant difference between VEC's and GMP's and CVPS's service quality plans that should be noted. Paragraph A.3 of VEC's Service Quality Plan provides that the successor plan "*shall* include financial penalties, and/or incentives tied to performance."⁸ GMP's and CVPS's service quality plans state that the successor plan *may* include financial penalties and/or incentives tied to performance.⁹ The Board noted in its order approving CVPS's service quality plan that it expected the successor plan would include financial penalties.¹⁰ Nevertheless, VEC's and the DPS's agreement that VEC's successor plan *shall* include these items is a significant additional benefit to ratepayers. I commend VEC and the DPS for agreeing to this language.

Format of Bills and Disconnection Notices

The DPS presented testimony that the format of VEC's bills and disconnection notices has caused confusion for some of VEC's customers. To VEC's credit, it has been working with

6. Frankel pf. at 4.

7. See, for example, Dockets 6120/6460, Order of 6/26/01 at 45.

8. Exh. Joint-1 at ¶ A.3 of Attachment B (emphasis added).

9. Docket 6107, Order of 1/23/01 at Appendices page 33; Dockets 6120/6460, Order of 6/26/01 at 45.

10. Dockets 6120/6460, Order of 6/26/01 at 45–46.

the DPS to resolve the DPS's concerns with both VEC's bills and disconnection notices. These discussions have been proceeding well, and neither party asks the Board to resolve this issue now. Instead, they intend to continue working together to resolve the issue. Therefore, I recommend that the Board take no action on this issue at this time. If the parties are ultimately unable to resolve the issue, the DPS is free to raise it again in another forum.

Change to TIER in Bond Covenants

This issue is a legal and procedural one, rather than a factual one. Both parties agree that VEC has changed its bond indenture dated August 1, 1997, to reduce the TIER for those bonds from 2.2 to 1.5. In addition, no party has asserted that it was inappropriate for VEC to reduce its TIER. In fact, the DPS supports the fact that VEC reduced the requirement.¹¹ The issue raised by the DPS is a procedural one: should VEC have notified the Board of its intent to change the TIER at the same time that VEC notified the DPS? Similarly, should VEC have obtained Board approval of the amendment under 30 V.S.A. § 108?

At the technical hearing, VEC's counsel explained that VEC did not notify the Board or seek Board approval for the amendments because the amendments did not change the amount owed, did not involve the issuance of new debt, did not change the repayment schedule, and did not change the security or collateral for the bonds. In addition, VEC's counsel noted that the Board has not issued guidelines regarding what constitutes a requirement for approval under 30 V.S.A. § 108. VEC's counsel stated that VEC also examined IRS regulations regarding what constitutes reissuance of debt, and concluded that changing the TIER requirement did not meet the IRS definition of reissuance of a debt instrument. VEC's counsel also noted that VEC did notify the DPS of its intent to change the TIER in its August 1, 1997, bond indenture, and relied upon this as proof that VEC was not trying to evade its regulatory responsibilities. Rather, VEC's counsel stated that VEC had made a legal determination that Board approval of the change in TIER was not necessary.¹²

11. Tr. 2/5/03 at 18 (Koliander).

12. Tr. 2/5/03 at 13-17 (Burak); Legal opinion entitled "Response to Question 8: Reduction in TIER Requirements for First Mortgage Bonds" at 3-4.

No party has asked that the Board rule in this Docket on whether VEC should have notified the Board of, or obtained Board approval of, the amendment prior to executing it. In fact, the DPS's position is that, while VEC should have notified the Board of the change, this issue should not delay Board approval of the MOU.¹³ Nevertheless, this issue has arisen and I believe the Board should address it.

VEC's counsel is correct that the Board's Order approving the August 1, 1997, bond indenture did not mention the TIER requirement.¹⁴ While I can understand how that might affect VEC's judgment regarding whether the change in the TIER was a significant issue (as Mr. Burak has asserted), I am heavily influenced by Mr. Koliander's testimony (to which VEC did not object) that if the TIER requirement had not been lowered, VEC would have needed to collect approximately *one million additional dollars* from its ratepayers. This amount is not trivial. In fact, it is almost as much as the amount of the revenue requirement increase that the parties have agreed upon in the MOU. It is hard for me to understand how an issue with potential revenue requirement impacts of that magnitude could be considered "not significant."¹⁵ Therefore, I conclude that VEC should have notified the Board of its intent to change the TIER at the same time it notified the DPS, and I recommend that the Board clearly state that changes in TIER (whether up or down) are significant changes that the Board should be promptly notified of whenever a utility intends to implement them.

The preceding discussion does not, however, address the legal issue of whether VEC was required by 30 V.S.A. § 108 to obtain Board approval prior to executing the amendment to its bond indenture that changed the TIER. VEC has explained that it concluded it was not required to obtain Board approval. The DPS has not taken a position on this issue. I find that this issue is outside the scope of this Docket, and not necessary to resolve in order to reach a decision on the

13. Tr. 2/5/03 at 17 (Hofmann).

14. Tr. 2/5/03 at 14 (Burak); Docket 5971, Order of 6/26/97, *generally*.

15. In this particular instance, the change resulted in a reduction to VEC's revenue requirement; I can only wonder whether VEC would have concluded that the issue was "not significant" if the change had resulted in an increase to VEC's revenue requirement. However, it should not matter whether the change resulted in a decrease or an increase to VEC's revenue requirement. A reduction or an increase to VEC's revenue requirement of over 5.6 percent is significant.

MOU. Therefore, I recommend that the Board take no action on this issue in this Docket. Instead, I recommend that the Board inform VEC that if it wishes Board approval of the change, or a declaratory ruling that Board approval is not necessary, it may file for one or the other outside this Docket.

I would, however, like to note that the Board stated in Docket 6015 that:

A company's execution of new or amended evidences of indebtedness, therefore, requires Board consent if either, or both, of two conditions would exist: first, if the interval between from [sic] the date of issue and the payable date of the financial instrument or agreement in question would exceed one year, or second, if the amount of the debt instrument or agreement in question, in combination with all other debt payable within one year, would exceed 20% of the Company's total assets.¹⁶

Read literally, this would seem to imply that VEC should have requested Board approval for the change in TIER since the bond indenture met at least the first of these conditions. However, VEC pointed out that it has also amended the August 1, 1997, bond indenture to change the bond trustee (in a separate amendment from the change in TIER). While that change would have fit within the above language from the Board's Order in Docket 6015, VEC does not believe the Board would want to approve an amendment that only changes the bond trustee.¹⁷ I believe VEC is correct on this point. Nevertheless, there is a difference between a change in the bond trustee, which may not have financial implications for ratepayers, and a change in TIER, which has significant financial implications for ratepayers because of its impact on a utility's revenue requirement.

V. CONCLUSION

For the reasons described above, I find that the MOU between VEC and the DPS that was filed on January 29, 2003, will result in rates that are just and reasonable, if Paragraph 2 is modified so that the 6.2 percent rate increase is effective with service rendered (rather than bills

16. Docket 6015, *Petition of Green Mountain Power Corporation for Authorization and Approval to Issue Up To \$40,000,000 of Long-Term Debt Under a Revolving Credit Agreement in re: Amended Order*, Order of 8/10/00, at 4 (footnote omitted).

17. Tr. 2/5/03 at 16 (Burak). VEC also pointed out that the Board's Order in Docket 6015 was issued after VEC had changed its bond indenture to reduce the TIER. Tr. 2/5/03 at 15 (Burak).

rendered) on or after August 14, 2002. Therefore, I recommend that the Board approve the MOU with this modification. I also recommend that the Board allow VEC and the DPS to continue to work together to resolve issues regarding the format of VEC's bills and disconnection notices. In addition, I recommend that the Board clarify that any utility that intends to amend a bond indenture to change the TIER (up or down) should notify the Board prior to executing the amendment. Finally, I recommend that the Board inform VEC that if it wishes to file for approval of the prior amendment that changed the TIER requirement in its August 1, 1997, bond indenture, or for a declaratory ruling that Board approval is not necessary, it may do so outside this Docket.

This Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

DATED at Montpelier, Vermont this 21st day of February, 2003.

s/Ann Bishop
Ann Bishop
Hearing Officer

VI. BOARD DISCUSSION

On February 21, 2003, the DPS filed comments on the Hearing Officer's Proposal for Decision. In those comments, the DPS supported the Proposal for Decision, but recommended that the Board instruct VEC to notify the Board of proposed changes to the debt service coverage requirements, similar to the Hearing Officer's proposal that VEC notify the Board when it intends to amend a bond indenture to change the TIER. The DPS explained that the debt service coverage requirement and TIER are included in utility bond covenants, and changes in either should be reported to the Board.

The Hearing Officer's reasoning for requiring utilities to notify the Board when they intend to change a bond indenture to modify the TIER is based on the effect such a change could have on a utility's revenue requirement. In this particular case, the reduction in the TIER meant that it was necessary for VEC to collect approximately one million dollars less from ratepayers. We agree with the Hearing Officer's conclusion that consequences such as these are significant, and therefore, it is appropriate to require a utility to notify the Board when it intends to make such changes.

For the same reason, a utility should be required to notify the Board when it intends to modify a bond indenture to change the debt service coverage requirement. In our experience, changes in the debt service coverage requirement also can have significant impacts on a utility's revenue requirement. In the particular case of VEC, it has been amply demonstrated that careful Board and Department review of proposed financings is essential if the utility's ratepayers are to be adequately protected. In the 1990's, the Board twice rejected VEC proposals to refinance its debt, concluding that the proposals were not financially viable for VEC, and would have resulted in VEC's customers paying excessive rates.¹⁸ While VEC may be in much stronger financial health at the present, we will not and must not forget the lessons of history; indeed, VEC's

18. Docket Nos. 5630/5631/5632, Order of 12/30/93; Docket Nos. 5810/5811/5812, Order of 2/8/96.

current financial strength is largely the result of the previous Board and Department review, and rejection, of the utility's proposed financings.¹⁹

Therefore, we accept the DPS's recommendation that we also require a utility to notify the Board when it intends to modify a bond indenture to change the debt service coverage requirement.

Finally, we will require that VEC notify the DPS, in addition to the Board, of such modifications to its bond indentures. This notice to the DPS is appropriate in light of the DPS's statutory duties and powers, and in light of the DPS's role as a party in this specific Docket.

VI. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings and recommendations of the Hearing Officer are adopted as modified by Paragraphs 10 and 11, below.
2. The Memorandum of Understanding ("MOU") dated January 29, 2003, between Vermont Electric Cooperative, Inc. ("VEC") and the Vermont Department of Public Service ("DPS") is approved with the modification described in Paragraph 3, below.
3. VEC is entitled to rates that will produce additional annual revenues in the amount of \$1,108,463 or 6.2 percent above existing Board-approved tariff rates for service rendered on and after August 14, 2002.
4. Within 60 days of this Order, VEC shall credit customers' accounts for the total difference between the rates approved by the Board in this Docket, and the 6.93 percent that customers began paying on August 14, 2002.
5. VEC shall negotiate with the DPS to establish binding minimum performance standards and make any necessary refinements to the measurement process, reporting protocols and methods of data collection included in the Service Quality & Reliability Performance,

19. We hope and expect that VEC will never repeat this history. There is no fundamental reason that financial and managerial competence should be a cyclical phenomenon at VEC, or at any utility. Nonetheless, the Board and the Department are obligated to perform their statutory duties, and in so doing can provide additional institutional memories to help utilities avoid repeating past mistakes.

Monitoring & Reporting Plan that is Attachment B to the MOU. The results of this negotiation shall be considered VEC's "Final Plan" (as defined in Attachment B to the MOU), and shall be filed with the Board for approval within 60 days of this Order. The Final Plan shall include, to the greatest extent possible, customer service guarantees permitting the waiver of fees for services not provided on a timely basis.

6. VEC shall negotiate with the DPS and, no later than 90 days prior to the expiration of the Final Plan, file with the Board for approval, a successor plan, which shall include financial penalties and/or incentives tied to performance.

7. VEC shall file performance monitoring reports with the DPS and the Board, as provided in Paragraphs 1 and 2 of Attachment B to the MOU.

8. In its 2002 Demand-Side Management Annual Report, which is due to be filed with the Board and the DPS on April 1, 2003, VEC shall provide detailed implementation information regarding its coordination with Efficiency Vermont in the delivery of efficiency services to VEC's residential high use members.

9. VEC shall file with the Board and the DPS a detailed report annually, at the time it files its FERC Form 1, on its vegetative maintenance activities and expenditures.

10. VEC shall, within ten days, file appropriate tariffs consistent with the above Findings and this Order, to take effect on a service-rendered basis, commencing on or after August 14, 2002.

11. In the future, if VEC intends to amend its bond indenture or any other evidences of indebtedness to change the Times Interest Earned Requirement or the debt service coverage requirement, it shall notify the Board and the DPS prior to executing any such amendment.

12. This Docket is remanded to the Hearing Officer for future proceedings.

13. A status conference shall be held to establish a schedule for the rate design proceedings in this Docket.

Dated at Montpelier, Vermont, this 12th day of March, 2003.

<u>s/Michael H. Dworkin</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: March 12, 2003

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.